



(2) The Appeals Board holds that the elimination of references to vocational rehabilitation benefits in K.S.A. 44-534a, effective July 1, 1993, does not preclude an Administrative Law Judge from awarding such benefits from a hearing held before the regular hearing for compensable inquiries which occur prior to July 1, 1993. Entry of the present award for such benefits prior to the regular hearing does not exceed the Administrative Law Judge's jurisdiction.

Prior to July 1, 1993, K.S.A. 44-534a authorized the Administrative Law Judge to award vocational rehabilitation benefits from a preliminary hearing. By virtue of amendments effective July 1, 1993, vocational rehabilitation benefits may be provided voluntarily but cannot be ordered. At the same time the Legislature also modified K.S.A. 44-534a by eliminating reference to vocational rehabilitation benefits as one of the benefits which can be ordered at a preliminary hearing. Respondent argues that the change in K.S.A. 44-534a is procedural and should, therefore, be applied to all hearings after its effective date of July 1, 1993. See Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 831 P.2d 958 (1992). The respondent argues the Administrative Law Judge therefore exceeded his authority in this case by ordering vocational rehabilitation assessment.

The Appeals Board finds first the right to vocational rehabilitation benefits, as distinguished from the procedure to obtain those benefits, is a substantive right. The law in effect at the time of the date of accident, therefore, controls. See State v. Chapman, 15 Kan. App. 643, 814 P.2d 449 (1991). In this case the accident is alleged to have occurred prior to July 1, 1993. At the time of claimant's alleged accident, the employer was required, under a defined set of circumstances, to provide vocational rehabilitation benefits.

The Appeals Board also finds that the elimination of the specific procedure, i.e., the preliminary hearing procedure, for awarding those benefits does not preclude the Administrative Law Judge from awarding the benefits for pre-July 1, 1993 injuries prior to the regular hearing. Pursuant to K.S.A. 1992 Supp. 44-510g, vocational rehabilitation benefits are to be provided any time the employee has remained off work for ninety (90) days or it is otherwise apparent to the Director that the employee requires vocational rehabilitation services. If a vocational assessment is not voluntarily furnished the assessment may be ordered pursuant to application of a party or on the Director's own motion. The assessment is a first step. In some cases, there are a series of additional steps leading to vocational rehabilitation. The statutory scheme clearly anticipates and by implication authorizes a hearing prior to the regular hearing for vocational rehabilitation issues even without the provisions in 44-534a relating to preliminary hearings.

The Appeals Board acknowledges case law indicating that the Workers Compensation Act has its own procedure which is complete and exclusive and not to be supplemented by rules borrowed from the code of civil procedures. See Shinkle v. State Highway Commission, 202 Kan. 311, 448 P.2d 12 (1968). However, the Administrative Law Judges in workers compensation proceedings are not bound by technical rules and procedures. The Act clearly affords a remedy which the statutory scheme anticipates will be provided before the regular hearing or the final award. The Administrative Law Judge may adopt appropriate procedure for enforcement for that remedy. See Bushey v. Plastic Fabricating Co., 213 Kan. 121, 515 P.2d 735 (1973).

Finally, claimant's counsel has advised the Appeals Board that the assessment has been completed and argues that the appeal is, therefore, moot. The respondent, on the other hand, contends that the appeal is not moot and requests a ruling. As the order for assessment only initiates what becomes an ongoing process for vocational rehabilitation, the Appeals Board finds that the issue is not moot and has, therefore, ruled on respondent's appeal.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Floyd V. Palmer, dated October 17, 1994, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1995.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Paul D. Post, Topeka, KS  
Kip A. Kubin, Overland Park, KS  
Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director